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Changes to Run-Off Insurance for Solicitors

by **Shane Neville**

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Run-off cover of indefinite duration is to be replaced by a more limited six-year run-off coverage period.

What is run-off insurance?

"Run-off" is a form of professional indemnity insurance which covers the historic liabilities of a business after it ceases to trade.

Why do solicitors need run-off insurance?

As solicitors' professional indemnity insurance works on a "claims-made" basis, cover needs to be maintained for a number of years after a practice is closed, to cover claims first made after the practice closes.

What has the regulatory regime for retiring solicitors in Ireland been to date?

The partners of all firms ceasing to operate since 1 December 2011 were, subject to meeting eligibility criteria, entitled to run-off cover from the Run-Off Fund (ROF), a subsidiary of the Law Society of Ireland's Special Purpose Fund (SPF). Run-off cover under the ROF was provided for an indefinite period after a firm ceased to operate.

What changes are now being made?

Under the Solicitors' Professional Indemnity Insurance Regulations 2020, which are due to come into effect on 1 December 2020, the ROF will only be required to provide cover for a period of six years for firms ceasing on or after that date (subject to criteria being met). The six-year period shall run from the expiry of the coverage period during which the firm's practice ceases.

Different rules apply to firms within the Assigned Risks Pool, which are not discussed here.

Is six years' run-off cover sufficient, given that the limitation period under the Statute of Limitations is six years for claims for breach of contract or negligence?

Maybe. Six years run-off cover should be enough for most claims. However, for claims in negligence, for example, it is possible that the cause of action may not "accrue" for a number of years after the disputed legal service was provided. Careful consideration should therefore be given to purchasing run-off cover for a longer period.

If the firm is authorised as an LLP before it ceases, will the former partners not benefit from limited liability after the firm ceases?

Yes and no. The partners of the closing firm should, in most circumstances, be able to benefit from limited liability in respect of acts or omissions occurring after the firm's approval as an LLP. The partners of a closing firm may remain personally liable for acts or omissions before the firm's authorisation as an LLP.

My partners and I are now approaching retirement. What provisions should we make?

Firms need to consider whether the minimum level of cover of €1,500,000 (including claimants' costs) is sufficient to meet their needs. This will depend on the nature of work carried out by the firm over the years.

The partners of the closing firm should also consider whether they need to purchase cover for a longer period than the six-year period available from the ROF from 1 December 2020.

Consideration should be given to finding a suitable "successor firm" to acquire the firm, instead of closing the firm and entering the ROF. Disposing of a firm for a nominal value to another firm may, in certain circumstances, be a way to minimise the risks associated with retirement by transferring the problem of future claims to the acquiring firm. Careful consideration needs to be given to the financial strength of the acquiring firm and its likelihood of remaining a going concern into the future.

Further Information

If you require advice regarding run-off cover or any aspect of solicitors' professional indemnity insurance, please contact Shane Neville at sneville@lkshields.ie or Grace Toher at gtoher@lkshields.ie of our firm.

The contents of the above article are for general information purposes only and do not constitute legal advice.

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